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Secretary for
Environmental
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State Water Resources Control Board



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Division of Water Rights

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NOTICE OF PUBLIC HEARING

Water Right Application 30532
Monterey County Water Resources Agency
Nacimienta River
San Luis Obispo County

Commencing on Tuesday, July 18 and Wednesday, July 19, 2000 at 9:00 a.m.
(and continuing on July 24, 25 and 26, if necessary).

at

State Water Resources Control Board
Paul R. Bonderson Building
First Floor Hearing Room
901 P Street, Sacramento

SUBJECT OF HEARING

The purpose of this hearing is to receive evidence that will assist the State Water Resources Control Board (SWRCB) in determining whether to approve water right Application 30532, Monterey County Water Resources Agency's (MCWRA) application to appropriate water from the Nacimienta River in San Luis Obispo County for storage in Nacimienta Reservoir.

BACKGROUND

Nacimienta Dam and Reservoir were built in 1956 by the predecessor to the MCWRA. Water right License 7543 (Application 16124) authorizes the storage of 350,000 acre-feet of water in the reservoir. A subsequent survey has shown that the capacity of the reservoir is actually 377,900 acre-feet, or 27,900 acre-feet more than License 7543 allows. Consequently, MCWRA filed A30532 on April 23, 1996, to obtain a water right for the 27,900 acre-feet of water not covered under License 7543. As with License 7543, water under this application will be released for percolation into the Salinas Valley Groundwater Basin (SVGB) via the Nacimienta and Salinas River streambeds. The water that is pumped from the SVGB is used for irrigation, domestic, industrial, and municipal supply. Incidental purposes of use at Nacimienta Reservoir include recreation and power generation.

Five protests were filed against Application 30532. The National Marine Fisheries Service, California Department of Fish and Game, and California Sportfishing Protection Alliance allege that the proposed project may adversely impact public trust resources in Nacimienta Reservoir, the Nacimienta River, and the Salinas River. The City of San Luis Obispo and a group of

landowners in the Salinas Valley¹ claim senior rights and allege that the proposed project may cause injury to those rights.

KEY ISSUES

1. Is unappropriated water available for appropriation to supply the project described in Application 30532?
2. Has the additional diversion to storage, which would be authorized by the approval of Application 30532, caused injury to persons with senior water rights downstream of the Nacimiento Reservoir? If so, how? What conditions, if any, should the SWRCB adopt to protect senior water right holders?
3. Has the additional diversion to storage, which would be authorized by the approval of Application 30532, caused adverse impacts to public trust resources in the Nacimiento River, the Salinas River, or the Nacimiento Reservoir? If so, what are they? What conditions, if any, should the SWRCB adopt to avoid or mitigate any adverse impacts on public trust resources caused by the proposed project?
4. Is the proposed project exempt from the California Environmental Quality Act? If so, which exemption applies to the proposed project and why?

HEARING PARTICIPATION

All persons who plan to participate in this hearing should carefully read the enclosure entitled "Information Concerning Participation in Hearing on Water Rights," and comply with all requirements set forth therein. As stated in that enclosure, persons intending to present evidence at the hearing must submit a "Notice of Intent to Appear" which must be **RECEIVED** by the SWRCB on or before **4:00 p.m. June 2, 2000**.

Materials submitted to the SWRCB should be addressed as follows:

Division of Water Rights
State Water Resources Control Board
Attn: Kevin Long
P.O. Box 2000
Sacramento, CA 95812-2000

PARKING AND ACCESSIBILITY

The [enclosed map](#) shows the location of the Paul R. Bonderson Building in Sacramento. Public Parking is available in public parking garages on 10th Street between O and P Streets, on L Street

¹ These landowners include: William & Penelope Barbree; California Orchard Company; Delicato Vineyards; Duflock Ranches; Margaret Duflock; Eagle Ranch Trust; Luis Echenique et al; Fairview Vineyards; J&L Farms; Michel & Mary Orradre; Paris Valley Ranch; Gordon Rosenberg; Salinas Land Company; San Bernabe Vineyards; Scheid Vineyards; Barbara Smith; Helen Smith; and Trivitner.

between 10th and 11th Streets and on P Street between 11th and 12th Streets, in metered spaces on area streets. The First Floor Hearing Room is accessible to persons with disabilities .

Questions concerning this notice may be directed to Kevin Long at (916) 657-1927 (FAX (916) 657-1485), or to Barbara Katz, Staff Counsel, at (916) 657-2097.

ORIGINAL SIGNED BY:

Maureen Marché
Administrative Assistant to the Board

Dated: May 24, 2000

INFORMATION CONCERNING APPEARANCE AT WATER RIGHTS HEARINGS

The following procedural requirements will apply to this hearing and will be strictly enforced by the State Water Resources Control Board (SWRCB). Failure to submit witness information and exhibits in a timely manner may be interpreted by the SWRCB as intent not to appear.

1. **PARTIES:** In accordance with section 648.1 of Title 23, California Code of Regulations, persons who are not described in section 648.1(b) and who want to be designated as a party shall submit a notice of intent to appear, written testimony, and exhibits, in accordance with the requirements set forth below with a request to be designated a party to the hearing.

A person who wishes only to present a policy statement, either orally or in writing, will be considered an interested person and not a party to the hearing. A person who wishes to present a policy statement is requested to file a Notice of Intent to Appear and follow the requirements governing policy statements (see item 6a below).

2. **NOTICE OF INTENT TO APPEAR:** Each person who intends to participate in the hearing as a party must submit to the SWRCB and to each of the other parties a written Notice of Intent to Appear (notice). If there is any change in the hearing schedule, only those persons who have filed a notice will be informed of the change.

The notice must include the name and address of the party or interested person, or the name of the party's or interested person's representative. An interested person should clearly indicate on the notice his or her intent to make a policy statement only. A person who wishes to participate as a party must also include the name of each witness who will testify on the persons behalf, together with a description of the proposed testimony and the estimated amount of time required by the witness to present an oral summary of his or her testimony, which must be submitted in writing as described in item 3, below. The attached form may be used.

Parties must submit six copies of the notice in time for it to be **received** by the SWRCB by **4:00 p.m. on Friday, June 2, 2000**. Following receipt of the notices, on or about **June 6, 2000**, the SWRCB will compile and mail to each person who has submitted a notice a list of persons to exchange information. Only persons who have submitted a notice will be included on the list of persons to exchange information. No later than **Friday, June 9, 2000**, each person shall serve a copy of its notice on each of the persons identified on the list along with a statement of service which indicates the manner of service.

3. **WRITTEN TESTIMONY:** Each party proposing to present testimony on factual or other evidentiary matters at the hearing must submit the testimony in writing. Oral testimony that goes beyond the scope of written testimony may be excluded. Written testimony is, and will be treated as, an exhibit (see item 4, below).
4. **EXHIBITS:** Each person shall submit six copies of its exhibits to the SWRCB and serve one copy on each of the other persons included on the list of persons to exchange information. Each party shall complete the enclosed Exhibit Identification Index and submit it with its exhibits. The status as evidence column will be completed by the SWRCB during

the hearing. The SWRCB will post a list of all exhibits submitted for the hearing on its website at <http://www.waterrights.ca.gov/hearings>. To facilitate this, parties are also requested to submit their Exhibit Identification Lists in electronic format either on a disk or by e-mail to wrhearings@waterrights.swrcb.ca.gov with the subject heading of "Nacimiento". If submitted electronically, please use a file format readable by Microsoft Word 97. The written testimony of each witness and the statements of qualifications for expert witnesses are considered exhibits and shall be designated as such. A statement of service with the manner of service indicated shall be filed with each party's exhibits. The Exhibit Identification Index, exhibits, and statement of service must be **received** by the SWRCB **no later than 4:00 p.m. on Friday, June 23, 2000**, and served on the other parties by mail on or before that date.

Proposed exhibits are subject to the following requirements:

- a. Information based on technical studies or models shall be accompanied by sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the studies or models.
 - b. In accordance with California Code of Regulations, title 23, section 648.3, public records of the SWRCB and documents or other evidence that have been prepared and published by a public agency, if otherwise admissible, may be submitted as exhibits by reference provided that the original or a copy is in the possession of the SWRCB.
 - c. If documents are submitted as exhibits by reference, the parties offering such documents shall advise the other parties with whom exhibits must be exchanged of the titles of the documents, the particular portions on which they rely, the nature of the contents, the purpose for which the exhibit will be used when offered into evidence, and the specific file folder or other exact location in SWRCB's files where the document(s) may be found.
 - d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
5. **RULES OF EVIDENCE:** Evidence will be admitted in accordance with Government Code section 11513.
6. **ORDER OF PROCEEDING:** The hearing will be conducted in accordance with California Code of Regulations, title 23, section 648.5 and the following specific rules.
- a. **POLICY STATEMENTS:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), the SWRCB will provide an opportunity for presentation of non-evidentiary policy statements or comments by interested persons who are not participating as parties in the proceeding. Policy statements will be heard first, beginning at **9:00 a.m. on Tuesday, July 18, 2000**.

Policy statements are not subject to the pre-hearing requirements for exhibits set forth above. All persons wishing to make policy statements, however, are requested

to file a Notice of Intent to Appear on the enclosed form indicating clearly an intent to make only a policy statement, or to call Mr. Kevin Long at (916) 657-1927, by **4:00 p.m. on Friday, June 2, 2000.**

Persons making policy statements will not be sworn or asked to affirm the truth of their statements, and they must not attempt to use their statements to present evidence of facts, either orally or by introduction of written exhibits. At the discretion of the hearing officer, questions may be addressed to persons making policy statements for the purpose of clarifying their statements. Persons making policy statements, however, are not subject to cross-examination.

Time limits of five minutes will be imposed on policy statements. Persons making policy statements are encouraged to have six written copies of their statement available at the time they speak for distribution to the SWRCB.

- b. **OPENING STATEMENTS:** All parties who present evidence in the hearing may make an opening statement. Oral presentation of an opening statement will be limited to 20 minutes for each party. An opening statement may also be submitted in writing. Parties should use their opening statements to explain the objectives of their case, the major points that will be made, and the relationship between the major points and the key issues. An opening statement may include any policy-oriented statements that the party wishes to make.

- c. **PRESENTATION OF EACH PARTY'S CASE-IN-CHIEF:** Each party shall present a case-in-chief addressing the key issues identified in the hearing notice. All written testimony and other exhibits shall be introduced during the presentation. Oral presentation of the direct testimony of each witness shall be limited to a maximum of 20-minutes per witness, not to exceed a total of two hours for all witnesses presented by a party. The time allowed for the presentation of a party's case-in-chief may be extended upon a showing of good cause. The hearing officer will limit presentation of redundant testimony.

All witnesses presenting testimony must appear at the hearing. Each witness shall be sworn and required to identify their written testimony as their own, affirm that the testimony is true and correct, and briefly summarize the major points in the testimony. Written testimony shall not be read into the record. The written testimony shall be treated as direct testimony in its entirety.

- d. **CROSS-EXAMINATION:** All witnesses will be subject to cross-examination by the other parties, SWRCB members, and SWRCB staff. Witnesses may be cross-examined on subjects that were not covered in their direct testimony.

If a party presents multiple witnesses on a given subject area or closely related subject areas, those witnesses may be subject to cross-examination as a panel, at the discretion of the hearing officer. Cross-examination will be limited to one hour per witness or panel of witnesses, for each party conducting cross-examination. The time allowed for cross-examination will be extended upon a showing of good cause

demonstrated in an offer of proof. Redirect examination and recross examination may be permitted for good cause at the discretion of the hearing officer.

- e. **REBUTTAL EVIDENCE:** Parties will have the opportunity to present rebuttal evidence. Parties must not use the opportunity to present rebuttal evidence to attempt to present new evidence that should have been included in the case-in-chief, or to present repetitive evidence. All rebuttal evidence will be subject to cross-examination.
 - f. **CLOSING ARGUMENTS:** At the close of the hearing, the hearing officer may allow oral arguments or set a schedule for filing briefs. If the hearing officer authorizes the filing of briefs, six copies of each brief shall be submitted to the SWRCB and one copy shall be serve on each of the parties required to exchange information for this hearing along with a statement of service which indicates the manner of service.
7. **EX PARTE COMMUNICATION:** During the pendency of the proceeding, commencing no later than the issuance of the Notice of Hearing, there will be no *ex parte* communications between SWRCB members or staff and any of the parties or interested persons regarding substantive issues within the scope of the proceeding. Communications regarding procedural matters will be permitted, but ordinarily should be directed to SWRCB staff and not to SWRCB members.
8. **CONDUCT OF PROCEEDING GENERALLY:** The proceeding will be conducted as provided herein and in accordance with the procedures for adjudicative proceedings set forth in California Code of Regulations, title 23, sections 648-648.8, 649.6, and 760, as they currently exist or may be amended. A copy of these regulations may be viewed at the Division of Water Rights' web site: <http://www.waterrights.ca.gov/Title23Regs.htm>

Materials submitted to the SWRCB should be addressed as follows:

Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000
Attn: Kevin Long
Phone: (916) 657-1927
Fax: (916) 657-1485
Email: wrhearing@waterrights.swrcb.ca.gov

With Subject of "Nacimiento"

NOTICE OF INTENT TO APPEAR

_____ plans to participate in the water right hearing regarding:
(name of participant)

WATER RIGHT APPLICATION NO. A030532
MONTEREY COUNTY WATER RESOURCES AGENCY
NACIMIENTO RESERVOIR

Scheduled for

July 18 and 19, 2000

_____ I/we intend to present a policy statement only:

_____ I/we plan to call the following witnesses to testify at the hearing:

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)*

(If more space is required, please add additional pages or use reverse side)

Name, Address, Phone Number and Fax Number of Attorney or Other Representative

Signature: _____ Dated: _____

Name (Print): _____

Mailing Address: _____

Phone Number: () _____ Fax Number: () _____

E-mail Address: _____

Participant _____

Exhibit No.	Description	Status as Evidence		
		Introduced	Accepted	By Official Notice

STAFF EXHIBITS OFFERED INTO EVIDENCE

SWRCB Staff Exhibits: The following items will be offered, by reference, as staff exhibits at the hearing:

1. For Application No. 16124, the
 - A. Application;
 - B. Permit (No. 10137);
 - C. License (No. 7543); and
 - D. Reports of permittee or Licensee
2. All files related to Application No. 30532.
3. The following topographic maps published by the United States Geological Survey covering the area under consideration: Bradley, Espinosa Canyon, Hames Valley, Greenfield, Palo Escrito Peak, Soledad, Paraiso Springs, Thompson Canyon, San Lucas, San Ardo, Pancho Rico Valley, Valleton, and Wunpost USGS Quadrangle maps.
4. "Declaration of Fully Appropriated Stream Systems," SWRCB Order WR 98-08 (November 19, 1998) and accompanying documents.
5. U.S. Department of the Interior, Geological Survey, Daily Stream Values for California for the Salinas River and its tributaries (Electronically Published to CD-ROM by Hydrosphere Data Products, Boulder, CO).
6. Water Quality Control Plan, California Regional Water Quality Control Board, Central Coast Region, February 18, 1997.

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c/o Lee Seda
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Woodland, CA 95695

Copley News Service
c/o Mr. Joseph Brooks
925 L Street, Suite 1190
Sacramento, CA 95814

Sierra Club
c/o Mr. Bob Rutemoeller
P.O. Box 587
Gualala, CA 95445-0587

Yuba-Sutter Appeal Democrat
P.O. Box 431
Marysville, CA 95901

G-4
Dept. of Boating & Waterways
c/o Mr. Mike Ammon
2000 Evergreen Street, Suite 100
Sacramento, CA 95815-3888

Southern California
Edison Company
c/o Mr. Anthony J. Landler
P.O. Box 800
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B-4
Calif Environmental Protection Agency
c/o James M. Strock
Secretary for Env. Prot.
555 Capitol Mall, Suite 235
Sacramento, CA 95812

Department of Fish & Game
Chief, Env. Serv. Division
1416 9th Street, Rm. 1341
Sacramento, CA 95814

Stetson Engineering
c/o Ali Shahrwody
2171 E. Francisco Blvd, Ste K
San Rafael, CA 94901

California Farm Bureau Fed.
c/o William Dubois, Dir.
of Natural Resources
11th & L Building, Room 531
Sacramento, CA 95814

Bartliewicz, Kronick
& Shanahan
c/o Alan Lilly
1011 22nd Street, suite 100
Sacramento, CA 95816

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Park Executive Building
925 L Street, Suite 320-A
Sacramento, CA 95814

City Attorney's Office
c/o Thomas M. Berliner
214 Van Ness Avenue
San Francisco, CA 94102

Northern California Council
of Fly Fishermen's Club
c/o Martin Seldon
1146 Pulora Court
Sunnyvale, CA 94086

Union Oil Co. of California
Environmental Science Dept.
P.O. Box 7600
Los Angeles, CA 90051

City of Los Angeles
c/o Eric P. Bock, P.E.
Department of Water & Power
Los Angeles Aqueduct Division
111 North Hope Street, Rm 1469
Los Angeles, CA 90012

Pechanga Indian Reservation
c/o Vincent B. Ibanez
P.O. Box 181
Temecula, CA 92390

U.S. Bureau of Reclamation
MP-710
2800 Cottage Way
Sacramento, CA 95825-1898

Contra Costa County
c/o Mr. John Clausen
P.O. Box 69
Martinez, CA 94553

Sherwin, Zuckerman & Sargent
c/o Mr. Thomas Zuckerman
Sperry Building
146 - 148 West Weber Avenue
Stockton, CA 95202

U.S. Fish & Wildlife Service
Ecological Division
2800 Cottage Way, Room E1803
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3801 Pegasus Drive
Bakersfield CA 93308-0837

US Fish & Wildlife Service
3310 El Camino Ave Suite 130
Sacramento CA 95825

Rose Mary Donoon
CNPS Monterey Bay Chapter
PO Box 221033
Carmel CA 93922

C Marshall
Dept of Fish and Game
3930 La Panza Road
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T Nason
Esselen Tribe of Monterey
38655 Tassajara Road
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Robert Strahan
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Paso Robles CA 93447

Mel McColloch
PO Box 454
Cambria CA 93428

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